UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES ATLANTA BRANCH OFFICE

LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1177

and

CASE 15-CB-05974

STEFFANIE FIELDS, an Individual

Beauford Pines, Esq. and Heather Beard, Esq., for the General Counsel.

Julie Richard-Spencer, Esq., (Robein, Urann, Spencer, Pickard & Cangemi), of Metairie, LA, and Kevin Mason, Esq. of Baton Rouge, LA, for the Respondent.

DECISION

Statement of the Case

KELTNER W. LOCKE, Administrative Law Judge: Laborers International Union of North America, Local 1177 (the "Respondent" or the "Union") operates a hiring hall in the Baton Rouge, Louisiana area. I find that Respondent violated Section 8(b)(1)(A) and (2) of the Act by failing to following the rules it established for the operation of its exclusive hiring hall, resulting in the loss of employment to individuals who were entitled to be dispatched but were not, and by failing to maintain and furnish on request records concerning the operation of the hiring hall and the individuals referred.

Procedural History

This case began on March 17, 2010, when Steffanie Fields (the "Charging Party" or "Fields"), filed the initial unfair labor practice charge in Case 15–CB–005974. Fields amended the charge on September 30, 2010, October 29, 2010, March 31, 2011, April 29, 2011, and May 30, 2011.

On May 31, 2011, the Regional Director for Region 15 of the Board issued a complaint and notice of hearing. In doing so, she acted on behalf of the Acting General Counsel of the Board (the "General Counsel" or the "Government").

Respondent filed a timely answer.

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On August 22, 2011, a hearing opened before me in Baton Rouge, Louisiana. The parties presented evidence on August 22, 23, 24 and 25, 2011. Respondent then requested a postponement because illness had made one of its witnesses unavailable. The hearing resumed and concluded on September 27, 2011. The parties thereafter filed briefs, which I have read and considered.

Admitted Allegations

Although Respondent's answer both admits and denies the allegations raised by complaint paragraphs 1(a) through 1(f), Respondent clearly admits that it received notice of the charges. Based upon that admission and the record as a whole, I find that the Charging Party filed and served the charge and amended charges as alleged.

Respondent's answer admits the allegations raised in complaint paragraphs 2(a), 2(b), 2(c), 2(d), 3(a), 3(b), 3(c), 3(d), 4(a), 4(b), 4(c) and 4(d). Based upon those admissions, I find that the General Counsel has proven these allegations, which concern the status of four employers which had agreed to use, and which have used, Respondent's hiring hall. More specifically, I find that the General Counsel has proven that the following companies are employers within the meaning of Section 2(2), (6), and (7) of the Act, and are subject to the Board's jurisdiction: Turner Industrial Maintenance, LLC, Fluor Maintenance Services, Inc., Stone and Webster Engineers and Constructors, Inc., and Williams Plant Services, LLC.

Respondent's answer admits that it is a labor organization within the meaning of Section 2(5) of the Act. I so find.

During the hearing, Respondent amended its answer to admit that its assistant business manager, Patrick Byrd, and its business manager/secretary, Nathaniel Keller, were its agents within the meaning of Section 2(13) of the Act. I so find.

35 Facts

I. Agency Allegations

The complaint alleges that a number of individuals are agents of the Respondent. As noted above, based on Respondent's answer, as amended at hearing, I have found that the business manager and secretary, Nathaniel Keller, and the assistant business manager, Patrick Byrd, were Respondent's agents at all material times. The complaint also alleges, but Respondent denies, that three other persons were Respondent's agents. These individuals are Shawanda Fitzgerald and Florence Thornes, who held the position which first bore the title "office manager" and later "bookkeeper/secretary," and Robert Parnell, assistant business

manager of the Southeast Laborers District Council. None of the three testified during the hearing.

The record reflects that Fitzgerald and Thornes primarily performed office clerical duties. Although the bulk of their work did not involve them in referring job seekers to employers, occasionally they would contact individuals on the referral list to notify them that work was available. However, the record does not establish that either of them made substantive decisions concerning whom to call.

The Board's test for determining whether an employee is an agent of the employer is whether, under all of the circumstances, employees would reasonably believe that the employee in question was reflecting company policy and speaking and acting for management. *Waterbed World*, 286 NLRB 425, 426–427 (1987). The Board considers the position and duties of the employee in addition to the context in which the behavior occurred. *Pan–Oston Co.*, 336 NLRB 305 (2001); *Jules V. Lane*, 262 NLRB 118, 119 (1982).

They clearly served as conduits between the hiring hall and those seeking to use it. Under all the circumstances, individuals whose names were on that list would reasonably believe that the Union had authorized Fitzgerald and Thomas to provide information regarding the list and referrals from it. Therefore, I conclude that Fitzgerald and Thomas, at the very least, possessed apparent authority to act as the Respondent's agents for the limited purpose of reporting such information as an individual's position on the referral list, the positions of others on the list, and whether any employers had placed requests for referrals. Accordingly, I further conclude that any statements they made about these matters are attributable to the Respondent. See, e.g., *GM Electrics*, 323 NLRB 125, 125–126 (1997) (construction office clerical who greeted applicants, discussed hiring needs with applicants, and provided and collected applications was employer's agent); *D&F Industries*., 339 NLRB 618 (2003).

Robert Parnell did not work for Respondent, but rather served as assistant business manager of the Southeast Laborers District Council. However, he met with Charging Party Fields at Respondent's offices and provided her with copies of documents, presumably in Respondent's possession, concerning referrals through Respondent's hiring hall and Fields' position on the referral list. I conclude that Fields reasonably would believe that Parnell possessed the authority to act on behalf of the Respondent in so doing.

II. Contractual Referral Provisions

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The Respondent operates a hiring hall which refers laborers to a number of construction contractors which have jobsites in Louisiana. Complaint subparagraphs 8(a) through (d) identify four of these employers and allege that they have entered into agreements with the Union making it the exclusive source for referrals of employees. The Respondent has denied these allegations.

The record does establish that the contractors named in complaint subparagraphs 8(a) through (d) have executed collective—bargaining agreements covering laborers. However, these agreements are with the Baton Rouge Building and Construction Trades Council (the "Council"),

an "umbrella" organization formed by local unions representing construction workers. The Union is a member of the Council and is mentioned in these agreements. The agreement between the Council and Turner Industrial Maintenance includes this typical language:

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ARTICLE VII - REFERRAL OF APPLICANTS

The local Unions will be the primary source of manpower; provided, that if the Local Unions do not man the job within 24 hours (or as specified below in the event of an emergency), the Contractor may man the job from other sources, The Contractor may give notice of its need for manpower by request for referrals either to the Council or the appropriate Local Union. If a request is made to a Local Union for referrals and that Local Union anticipates that it will be unable to fill all or part of the request within 24 hours, the Local Union shall so notify the Contractor as soon as possible and if time allows the Contractor will submit a request to another Local Union to man the job within the 24 hour period.

In hiring for turnarounds, the Contractor will request the various Local Unions to refer applicants in the same approximate proportions as the craft skills required for the planned work as determined in good faith by the Contractor. During the term of the turnaround the Contractor will use good faith efforts to maintain a workforce in which the number of employees hired from each Local Union is in approximate proportion to the craft skills required for the remaining work; factors to be considered in doing so shall include efficiency of operations, the nature of the work and the requirements of the client/owner. When hiring for a turnaround, the Contractor will notify the Council of the number of applicants required from each Local Union.

In the event of a plant emergency requiring filling of work orders in a timeframe of twelve (12) hours or less, the Contractor will attempt to hire by skill through the normal referral channels, but will have the latitude to fill work orders through any Local Union.

The Contractors will make an initial call to the Local Union and if respective Local cannot or won't fill that order the Contractor reserves the right to transfer manpower from other jobs after the courtesy call has been made.

Applicants, when hired, shall be considered probationary employees for thirty (30) days and may be released without cause at the discretion of the Contractor. After thirty (30) days, probationary employees shall be considered regular employees. Applicants may be called for by name by the contractor.

The Council agrees that applicants certified in Process Safety Management requirements will be referred to a location designated by the Contractor for the purpose of pre-hire administration and processing, drug screening, physical evaluation and pre-hire indoctrination prior to reporting to the jobsite.

Similar language appears in other agreements between the Baton Rouge Building and Construction Trades Council and various employers.

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Additionally, Respondent had a referral relationship with certain employers because of agreements negotiated by the Building and Construction Trades Department of the American Federation of Labor—Congress of Industrial Organizations (AFL–CIO) and an employer association, the Associated Maintenance Contractors. Such an agreement is called a "General Presidents' Project Maintenance Agreement." Its management-rights clause provides, in part:

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1. The Unions understand that the Contractor is responsible to perform the work required by the Owner, Therefore, the Contractor has the complete authority and right to:

. . . . * * *

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c. Hire and lay off employees as the Contractor feels appropriate to meet work requirements and/or skills required. The Contractor may hire employees by name who have special skills or have previous maintenance experience.

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III. <u>Is Hiring Hall Exclusive?</u>

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The language described above is pivotal because the Respondent's obligations under the law will vary depending on whether or not its employment referral system meets the definition of "exclusive hiring hall." A union operating such a system wields a power generally exercised by employers, deciding which applicants will be hired and which will not. When an employer enters into an agreement to use a union's hiring hall as the exclusive source of employees, it delegates to the union that "gatekeeping" function, giving the union power it otherwise would not have to influence employment decisions.

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Every decision to employ an individual entails an act of discrimination, in the word's broadest sense, which signifies only the making of a choice and not necessarily the violation of any law. An exclusive hiring hall arrangement gives a union power to make such decisions which otherwise would be within the exclusive province of the employer.

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Section 8(b)(2) of the Act makes it unlawful for a labor organization "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3). . . or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership." 29 U.S.C. § 158(b)(2).

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To be sure, a union may violate this provision in ways which do not involve the operation of a hiring hall. However, these other ways entail a union communicating a request or demand to an employer to do something, resulting in the employer itself committing the discriminatory act. By comparison, when a union operates an exclusive hiring hall, the union itself makes the

employment decision by exercising the authority delegated to it by the employer. Thus, an exclusive hiring hall arrangement uniquely increases a union's opportunity to violate Section 8(b)(2), and the absence of an explicit communication from the union to the employer can make it more difficult to discern the existence of any unlawful motive.

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However, another provision of the Act takes into account the unique working conditions of the construction industry, where employers typically need employees with specific skills and experience for brief periods, and workers need an efficient way of finding continuing employment. Because a hiring hall can address these needs, Congress included in the Act a provision applicable to the construction industry. Section 8(f) of the Act states

It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a

labor organization of which building and construction employees are members (not established, maintained, or assisted by any action defined in section 8(a) of this Act [subsection (a) of this section] as an unfair labor practice) because (1) the majority status of such labor organization has not been established under the provisions of section 9 of this Act [section 159 of this title] prior to the making of

such agreement, or (2) such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later, or (3) such agreement requires the employer to notify such labor organization of opportunities for employment with such employer, or gives such

labor organization an opportunity to refer qualified applicants for such employment, or (4) such agreement specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or

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29 U.S.C. § 158(f) (emphasis added).

in the particular geographical area. . .

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The statutory language quoted above, referring to an agreement which requires the employer to notify a labor organization of opportunities for employment or gives such a labor organization an opportunity to refer qualified applicants, is broad enough to encompass both exclusive and nonexclusive hiring halls. However, because of the greater power entrusted to a union which operates an exclusive hiring hall, different legal principles sometimes apply.

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Board precedents define what is an "exclusive hiring hall" and a union's referral system may fall within this definition even if it is "exclusive" only in certain ways and under certain conditions. To be "exclusive," a hiring hall need not be the sole source of all employees under all circumstances.

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It is well settled that a hiring hall is deemed to be exclusive where the union retains exclusive authority for referrals for some specified period of time, such as 24 or 48 hours, before

an employer can hire on its own. See Carpenters Local 608 (Various Employers), 279 NLRB 747, 754 (1986), citing Mountain Pacific Chapter AGC, 119 NLRB 883 (1957); Boilermakers Local 587 (Stone & Webster), 233 NLRB 612, 614 (1977); Carpenters Local 78 (Murray Walter), 223 NLRB 733, 734735 (1976).

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Likewise, a hiring hall can be "exclusive," for purposes of determining whether certain actions are lawful under Section 8(b)(2) of the Act, even though employers using the hiring hall have reserved the right, under specified circumstances, to transfer some of their own employees from other locations to the jobsite in question. See *Carpenters Local 600 (Various Employers)*, above; *Bricklayers Local 8 (California Mason Contractors)*, 235 NLRB 1001, 1003 (1978).

In this case, the agreements establishing the hiring hall make it "the primary source of manpower" and obligates participating employers to begin the process of finding employees (in job categories represented by Respondent) by requesting them from Respondent. Except in certain "plant emergency" situations, if Respondent can supply the requested workers within 24 hours, Respondent must employ them. Even in a "plant emergency," in which workers are needed within 12 hours, an employer must first seek them through the normal referral channel, the hiring hall.

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Based on the contractual language, I conclude that Respondent operated an exclusive hiring hall. It is true that this language appears in collective-bargaining agreements executed by the Baton Rouge Building Trades Council rather than by Respondent itself. However, Respondent is a member of the Building Trades Council and has acted in accordance with the language which the Council negotiated.

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IV. Respondent's Hiring Hall Rules

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Because the Respondent's referral system is an "exclusive hiring hall," as Board precedent defines that term, the rules governing its operation take on special significance in several ways. The very existence or nonexistence of such rules becomes a matter of considerable legal consequence. Similarly, the manner and extent to which Respondent followed or ignored the rules will determine whether or not it acted lawfully.

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A union commits an unfair labor practice if it administers an exclusive hiring hall arbitrarily or without reference to objective criteria, even absent a showing of animus against nonmembers. See *Stagehands Referral Service*, *LLC*, 347 NLRB No. 1167 (2006); *Boilermakers Local 374 v. NLRB*, 852 F.2d 1353, 1358 (D.C. . Cir. 1988); *Plumbers Local 619 (Bechtel Power Corp.)*, 268 NLRB 766 (1984); *Plumbers Local 198 (Stone & Webster)*, 319 NLRB 609 (1995).

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Moreover, a union which has promulgated procedures for the operation of its exclusive hiring hall, and then deviates from them, commits an unfair labor practice if the failure to observe the rules results in a denial of employment to an individual who otherwise would have been referred. The Board has held that a union may violate Section 8(b)(1)(A) and (2) by deviating from its hiring hall procedures even in the absence of a specific discriminatory intent. See, e.g., *Electrical Workers Local 211 (Atlantic Division NECA)*, 280 NLRB 85, 8687 (1986); *Sheet Metal Workers Local 19*, 321 NLRB No. 158 (1996).

On January 21, 2009, the Respondent adopted rules for its referral system, based on a pattern from the International Union. These rules provided, in part:

All referrals by Local Union to jobs within its jurisdiction shall be made in accordance with these Guidelines except to the extent that any rule contained herein conflicts with a term of a collective bargaining agreement.

The portions of Respondent's hiring hall rules quoted here are set forth verbatim, without correction, as they appear in the record. They establish the following procedure:

- A. An member/applicant seeking referral to a job must file with the Local Union a signed and dated referral form providing name, telephone number, social security number and stating all qualifications, including work history for the previous (2) years, locations for which the applicant is available, and any skills the applicant possesses, and certifications.
 - 1. The Local Union will compile two (2) out-of work lists, consisting of regular members and applicants who have registered their availability for referral, listed in order of seniority according to their date of registration and established on the basis of qualifications.
- B. Only members/applicants who are not currently employed at the trade may register-their availability for referral.
- C. Members/Applicants shall be removed from the out-of-work list upon receiving a job referral. Members/Applicants who receive through no fault of their own, work forty (40) hours, or less shall, upon re-registration within forty-eight (48) hours of termination or lay-off; be restored their place on the list. However; after receiving a job referral immediately following a short term referral, regardless of its length, that individual must again register (by calling the local and turning in a lay-off slip) in order to be included on the out of work lists. The following items will result in removal from the out-of-work list.
 - a) Accepting a referral for a job and then failing to report to the job: lst offense- off the list for thirty (30) days, 2nd offense- off the list for ninety (90) days, 3rd offense- off the list for one hundred eighty (180) days (Exception only for unforeseen extenuating circumstances).
 - b) Any member/applicant who fails to accept suitable employment during-established dispatch hours two (2) times will be removed from the out-of-work list.

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5	c)	Prior to the referral of the employers requirements to pass a drug test, and accepts the referral and fails an employer or union required drug or alcohol test, or is discharged: for possessing, using or being under the influence of drugs or alcohol on the job, shall be removed from the out-of-work list for:		
10		1st' offense = 30 days 2nd offense = 90 days 3rd offense = 1 year Additionally, the member/applicant must present the Union		
15		documentation of the completion of an appropriate rehabilitation or counseling program and documentation of a clean drug test at his or her own expense.		
20		The suspension from the list shall not commence until the applicant returns to or re-register again on the out-of-work list after the specified suspension and they will be placed at the bottom of the list. The member/applicant will be responsible for re-registering.		
25	d)	Voluntary termination of employment after having been referred will result in the removal from the list for thirty (30) days (Exception only for unforeseen extenuating circumstances). If terminated for violation of company policies, the member/applicant will be placed at the bottom of the out-of-work list.		
30	e)	Failure to notify the union in the event they become employed.		
35	f)	Roll call is the first (1st) Monday of every month from 8:00am until 4:00pm. If that Monday is a holiday, roll call will be the next working day. New members/applicant's registration of availability for referral will be in effect for one calendar month. Each member/applicant must again register his or her availability by telephone or in person on roll call day (1st Monday of the month) in order to retain his or her position on the out-of-work lists.		
40		* Note: If a member/applicant does not register by 4:00pm on the day of roll call, he/she will be placed at the bottom of the out of		

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Respondent's referral lists and the circumstances resulting in a person's name being removed

The rules quoted above concern how an individual's may be placed on one of

work list

from a list. Respondent's hiring hall rules also include the following provisions regarding the referral process itself:

A. Members/Applicants on the out-of-work lists shall be referred to jobs in order in which they have registered their availability for referral, with the first registered member/applicant-referred first, provided that the member/applicant has the qualifications requested by the employer.

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- B. Requests by an employer for specific member/applicants should be made in writing (on company letter head) or, if made orally, shall be confirmed promptly by the employer in writing. Employer can only request by name 50% of each job task and member/applicant must have worked six (6) months prior to being requested.
- C. The Local Union shall record all employer requests for laborers, the date and time of the request, the name of the dispatcher, the name of the employer, the location of the job and the start date of the job.

Laborers Local Union #1177 uses the phone call referral system for dispatch; during the designated referral hours between 8:00am and 11:00 am. Local #1177 will make only one (1) phone call to each member/applicant letting the phone ring at least six (6) times and if the applicant leaves more than one number (up to a maximum of two (2)) we will also call those numbers letting the phone ring at least six (6) times. Based on the request of qualifications of the contractor, we will call in order starting with the three (3) members from the member-list and one (1) from applicant list on down. Requests received or filled outside the designated referral hours would be classified as "off hour" requests and Local Union #1177 will make every effort to contact the qualified members/applicants from the referral list by making a single call in order starting with the member list (3) and applicant list (1) on down until the job is filled. Any member/applicant that is not reached during the 'off hour" will not be penalized or designated unavailable and will maintain their position on the out-of-work lists.

Respondent's hiring hall rules also include provisions concerning the creation and maintenance of referral records as well as access to these records.

A Local Union shall maintain accurate and current records of all job referrals. The records shall be preserved for a period of three (3) years from the making of each record. The records shall include the following information:

a) Under telephone referral systems where the Local Union calls the member/applicant, the Local Union must record all referral

attempts; including the date and time of the call(s), the name of the person making the call(s) and the outcome of the call.

- b) Under all referral systems, the Local Union must also record:
 - i. All registration by member/applicants of their availability for referrals, including the date of each member's/applicant's registration:
 - ii. A current out-of-work list, including all members/applicants whose registrations of availability for referral are in effect, listing the date of each members/applicant's registration and organized according to seniority on the out-of work list.
 - iii. All request from employers for workers, including the date of each request, the name of the employer, the location of the job site, the length of the job (if known) and any request by the employer for member/applicants with special skills, licenses, or certifications or specific member/applicant pursuant to 5(B), above.
 - iv. All job referrals made, including the name of the employer, the member/applicant referred, the date on which the member/applicant registered his or her availability for employment, the date of the referral, the location of the job site, the date the member/applicant was hired and the date any employment was terminated.
- 8. Access to Job Referral Information
- A. The Local Union must promptly respond to any member/applicant's request for access to any record containing the job referral information described in paragraph 7, pertaining to periods during which the member/applicant was registered for referral. Access to records includes the right to review or take notes from all referral documents. Local Unions may adopt rules that restrict access to Social Security Numbers and members' telephone numbers where there is concern that such information may be misused in a manner contrary to the interests of the local union. In all cases, however; members/applicants must be provided sufficient information to determine the identity of all individuals registered, contacted or dispatched for employment.

An appointment for inspection shall be scheduled within five (5) days of request. Copies shall be provided promptly, subject to reasonable copying costs.

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Members/Applicants who are enrolled and taking training at the South Central Laborers Training and Apprenticeship Fund and members/applicants who are temporarily unable to work, due to illness or injury. shall maintain their position on the out-of-work lists (frozen and not advancing) by submitting notice in writing to the Local Union verifying they are in fact not available for immediate employment. Members/Applicants will also be allowed to take up to 30 days vacation time per year by submitting notice in writing to the Local Union.

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Requests by an employer for qualified women or minorities shall be fulfilled by referring members/applicants as registered who meet requirements: The Business Manager shall refer a qualified Steward/Foreman to any job deemed necessary, regardless of their position on the "out-of-work" lists.

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B. Lists containing the information described in paragraph 7B(i) and 7B(ii) shall be posted, or otherwise immediately available for inspection at the offices of a Local 1177 on a weekly basis, so that the previous week is posted or immediately available by the close of business on the following Monday. The information shall remain posted or immediately available for at least two weeks.

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These Hiring Hall Rules were approved by the Executive Board of Local Union #1177 and approved by the membership through two (2) consecutive meetings.

V. Respondent's Actual Practice

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Respondent's assistant business manager and recording secretary, Patrick Byrd, also serves as dispatcher, with responsibility for operating the hiring hall on a day-to-day basis. Byrd described the process in a September 2, 2010 letter he wrote to Kevin Mason, one of Respondent's attorneys. That letter stated, in part, as follows:

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This is to inform you of the way in which we generate a Referral List. The Referral List A is also referred to as the out-of-work list. On this list we place all of our members that are out of jobs and waiting for a contractor to call for laborers to work at specific jobsites.

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On the first Monday of each month the members call the office for their name to be placed on the out-of-work (referral A) list. At the end of the day a list is generated by the computer program we currently use which shows all those that call in to have their names placed on the list. All members who do not call are automatically dropped from the list by the computer. Whenever they do call, after the first Monday, they are placed at the bottom of the list by the computer. Once the list is printed on the first Monday, we do not print another list on a daily basis.

Whenever a contractor request us to send out laborers to work, we set-up the job which is given a number in the computer and then we pull up the out-of-work (Referral A) list and begin from number one (1) calling those on the list who are interested in working at that particular Job. All of the laborers who accept the job are then dispatched and their names are removed from the Referral list. When this transaction is completed, the computer automatically removes them from the list and the others whose names are below them is moved up on the list but no new list is printed at that time but the list that is in the system is used. When a laborer is terminated/laid-off from a job they bring their lay-off slip to the office and they are put back on the out-of-work list at the bottom or at their original position if they worked less than 40 hours.

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As per your request of Referral A list for the dates specified in February, March, April, May, and June, only one list was initially printed at the end of the work day on the first Monday of the Month.

Normally our office is open Monday thru Friday from 8:00am to 5:00pm. Whenever there is an emergency at a jobsite on the weekend, the Dispatcher is contacted and he immediately comes to the office to call and dispatch laborers to that particular jobsite as needed. He may print a list with the members' contact information to be able to call them while he is out on Union business. Hope that this gives you the reason why we do not have a list for the dates in question.

Thus, once a month, individuals who wish to use the hiring hall call in to have their names placed on a list, which is then printed out and posted. However, the dispatcher does not refer to this posted list when he makes a referral. Rather, he uses the computer.

The process of making the referral removes the name of the person selected from the list inside the computer, but doesn't affect the list which had been printed and posted. Therefore, with each referral, the updated list inside the computer diverges more from the posted list, which only changes once a month.

In some ways, the actual referral process is more varied, and variable, than the description in Byrd's letter might suggest. This complexity becomes apparent in Byrd's testimony, about the operation of the hiring hall. This portion of Byrd's testimony is uncontradicted and it includes instances when Byrd freely admits that he did not follow the hiring hall rules, which indicates a sincere effort to describe what happened as best his memory would allow. Accordingly, I credit that testimony

Byrd testified that when an employer submits a request for manpower, he looks it over and then enters the information into the computer, which "generates a number." Byrd then writes the number on a work order. If the employer's request does not seek laborers with special skills, Byrd begins calling individuals who have registered for referral. "The computer," Byrd testified, "automatically goes to number 1." Byrd then goes down the list.

However, the process becomes more complicated when an employer requests 10 or more workers. For example, on September 22, 2009, Fluor Maintenance Services sent to Respondent by facsimile a request that 10 workers be referred. The request listed the names of the 10 individuals that the employer wanted.

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As quoted above, the Respondent's hiring hall rules provide that an employer "can only request by name 50% of each job task and member/applicant must have worked six (6) months prior to being requested." This language conflicts with terms of the collective-bargaining agreements which establish the referral system.

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For example, the Baton Rouge Building and Construction Trades Council negotiated agreements with contractors which include the provision that "Applicants may be called for by name by the contractor." This provision does not include any limitation either by number of employees or percentage. These agreements, although negotiated by the Building and Construction Trades Council, are binding on Respondent.

Respondent also is bound by the terms of the General Presidents' Project Maintenance Agreement which the AFLCIO's building and construction trades department negotiated with the American Maintenance Contractors Association. That agreement includes the language "The Contractor may hire employees by name who have special skills or have previous maintenance experience."

Considering the language conflict between the hiring hall rules and the collective-bargaining agreements, it is not surprising that the dispatcher's boss, Business Manager Keller, becomes involved. Thus, dispatcher Byrd testified as follows concerning the September 22, 2009 referral request from Fluor Maintenance:

- Q ...So, Mr. Byrd, now let's go back to General Counsel's Exhibit 19(b), sir. Now, is that a labor requirements sheet that you have in front of you?
- A Correct.
 - Q Okay. And can you please describe to the Court how you received this document?
 - A They faxed this document over from Fluor Maintenance to our fax machine.
 - Q Okay. And then once you received this document, 19(b), is that when you go to the computer system to create the document that's labeled as 19 that has a job order number at the top, 2306?
 - A No. Not that fast.
 - Q Okay. Walk us through the procedure.

All right. If I get a lead requirement with over ten people requested, then I take it to Nathaniel Keller, and then he try to call the site manager and try to adhere to our 50 [percent] rule before we -- you know, when we first get this. If it's got over 50, then Keller -- I give it to Mr. Keller and he calls the site manager and tell him about the 50 rule that we're trying to implement.

. . . .

- Q Okay. And then after that -
- A After . . . he talk to the site manager, after they go through their discussions, then he makes a decision what we're going to do with it.
- Q Okay. And then once a decision is made, what do you do with the information that's provided on [the labor requirements sheet?]
- A Then I go to the computer. . . Once you go and put the information in, then you go to the dispatch. They say, dispatch, and then the computer automatic starts from number 1 and goes one by one, if it ain't no special skill.
- Q Okay. And so—and just at the top of this form, all the information at the top, before the words, Dispatch call log summary, all that information is entered from this labor requirements sheet that you received, 19(b).
- A Not all the time.
- Q And please explain, sir. What do you mean by that?
- A Like we forgot to put in the help—the skill about the boiler. You see in the section on 16(b) where they got boiler in there?
 - Q Yes, sir.

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- A That's what he needs, special people that can get in the boiler to shove some pallets in there, and we forgot to put it into our—into the call log system, the referral system.
- Q And so where the —on this job, 19(a), where it says, Skills requested -
- A Uh-huh.
- Q -- you're saying that's where it should have something about boiler?
- A It ain't in our skill requested sheet, but it should have been on the job description. Do you see where it say, job description, right here?

The record also establishes that Respondent sometimes ignored the referral list and dispatched job seekers who happened to be in the hiring hall at the time Respondent received an employer's request. That happened, for example, on October 8, 2009. Byrd testified that he did not follow the list but instead sent Jason Holliday and Donald Walker, who were present at the hiring hall. On that particular job, Byrd explained, the requesting employer "needed somebody to be over there in 30 minutes."

Byrd further testified that on October 2, 2009, he received a call from Fluor Maintenance Foreman Joe Doherty called him, saying he needed employees "ASAP." Byrd did not resort to the referral list, but instead dispatched Stacey Zanders, Kermit Williams, and Johnathan Cochran.

Byrd explained that he had received the foreman's call before he had arrived at the hiring hall. "When I got to the hall, I seen them and I dispatched them then to go on this hot job, emergency job . . ."

- Q So for those three individuals, you're on your way to the union hall. You saw the individuals, so you dispatched them.
- 45 A Correct.

- Q So for that particular instance, then, you didn't make a log of any calls or go down the referral list.
- A Correct.

In the two instances discussed above, Byrd testified that the requesting employer needed employees right away. However, Byrd ignored the referral list on other occasions as well. On October 9, 2009 Byrd dispatched Lawanda Lewis and Reuben Mims without regard to the referral list.

- Q So in this particular job order, you did not call individuals and dispatch individuals according to their positions on the referral list that particular date. Correct?
 - A Correct.
 - Q Okay. So—and since you didn't call down the list, then you didn't make any log for the calls in this dispatch call summary section. Correct?
 - A Correct.

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- Q And how is it that you selected Reuben Mims to be dispatched?
- A Reuben Mims is another person come by the hall a lot, and Ms. Janice Dotson.
- Q So both of those individuals just come by the hall often?
- A Correct.

Byrd admitted that on October 23, 2009, he dispatched an individual, Tony Dunmore, who was not on the referral list and who had not been requested by name. On November 4, 2009, Byrd dispatched Artemus Davenport without regard to his position on the referral list. Byrd testified:

- Q Mr. Davenport, he was not requested by name, was he?
- A (Perusing document.) No.
- Q And how was it that Mr. Davenport came to be dispatched for this particular job?
- A They needed people to dig in a tunnel.
- Q Okay. And was Mr. Davenport at the union hall at the time?
- A Correct.
- Q Okay. Yes. On [General Counsel's Exhibit] 19
- A It should have been inputted in there, because they need manpower for to get some catalysts. There's some metal catalysts they get out that boiler.
- Q Okay. So [General Counsel's Exhibit] 19, where it says, description, on the left hand side of the form, it should have had there something about the boiler.
- A Correct.

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 - Q And how was it that Mr. Davenport came to be dispatched for this particular job?
 - A They needed people to dig in a tunnel.
 - Q Okay. And was Mr. Davenport at the union hall at the time?
 - A Correct.

On December 6, 2009, Respondent dispatched Brett Glynn and Vincent Link to jobs at the PCS Nitrogen project. Byrd testified, after reference to his pretrial affidavit, that the employer had not requested either Glynn nor Link by name. On December 7, 2009, Respondent dispatched Thurmertha Patrick to the same jobsite. Like Glynn and Link, she had not been requested by name. Byrd admitted that he did not dispatch them according to the referral list.

On December 8, 2009, Byrd dispatched Richard Williams, Leandrew Martin and Dennis O'Conner to work for Turner–PCS. Byrd admitted that the employer had not requested these individuals by name and that he did not use the referral list to select them:

- Q And for this particular job order number, you did not go down the referral list and call the individuals.
- A Correct.

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- Q And were Williams, Martin and O'Conner at the union hall at the time you decided to dispatch them?
- A Leandrew and Richard Williams.

On January 11, 2010, Byrd dispatched Keith Chambers to a job even though the employer had not requested Chambers by name and even though Byrd selected Chambers without reference to the referral list. Byrd testified as follows:

- Q Okay. And you did not call down the list to dispatch Chambers.
- A Correct.
- Q So how was Chambers selected to be dispatched?
- A He'd been out there before, and he was at the hall, and they needed somebody out there immediately, because Vexter Stewart couldn't make it.
- Q So Chambers was at the hall, so you dispatched him.
- 30 A Correct.

On April 6, 2010, Byrd referred four individuals—Peeples, Arnold, Taylor and Collins—to work at PCS Nitrogen (job 2416). The employer had not requested any of them by name, but had indicated it needed employees as soon as possible. Byrd testified that he did not use the referral list.

- Q So did you go down the referral list for that particular job and call individuals according to their positions on the list?
- A No.
- Q Were any of these individuals at the local hall at the time you made the dispatch, sir?
- A Bakari and Arnold.
- Q They were at the local hall when you made the dispatch.
- A Right.
- Q So you dispatched them?
 - A Correct.

- Q How did you select Peeples and Collins?
- A Both of them came in later -- no. Collins came in, and Taylor came in later.
- Q To the local hall?
- A Correct.

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- Q And you dispatched the two of them.
- A Correct.

On April 7, 2010, Byrd dispatched three persons—Pointer, Foster and Brody—to work at Fluor Maintenance. However, the employer only had requested Foster and Brody, but not Pointer, by name.

- Q So Pointer was not requested by name.
- A Correct.
- Q So how did you select Pointer to be dispatched?
- A She came and put her name on the list later that evening.
- Q So she came in the local hall, and you dispatched her.
- A Correct.

On May 10, 2010, in another referral to Fluor Maintenance (for a job designated 2445), Respondent dispatched 13 individuals, none of whom had been requested by name. Byrd testified that he did not use the referral list to select them:

- Q So how were those 13 individuals selected to be dispatched?
- A It was overrided by [Business Manager] Nathaniel Keller. They needed people to get the belts, picking up 70-pound sacks or something they was doing.

The summary above omits instances in which employers requested workers by name and Respondent referred those individuals because I conclude, for reasons discussed later in this decision, that the collective-bargaining agreements allowed for such requests.

VI. Keeping and Providing Adequate Records

Paragraph 7 of the complaint alleges that since on or about October 2, 2009, and continuing, Respondent has arbitrarily failed to follow its written hiring hall rules by the following conduct: [Failing to] (a) Maintain accurate and current records of all job referrals for a period of 3 years from the making of each record; (b) Promptly respond to any member/applicant's request for access to any record containing the job referral information covering periods during which the member/applicant was registered for referral and schedule an appointment for inspection within 5 days of request; (c) Promptly provide member/applicants with copies of any record containing job referral information; (d) Limit Employer requests for specific member/applicants by name to 50 percent of each job task; and (e) Utilize the phone call referral system to call qualified members/applicants in order on the referral list until a job is filled.

The Act does not require a hiring hall to maintain records for a 3-year period. Under the General Counsel's theory of the case, a failure to maintain records for this long constitutes an

unfair labor practice because Respondent has a duty to follow the rules it promulgated for the operation of the hiring hall, and the Respondent's own rules provide that the "records shall be preserved for a period of three (3) years from the making of each record."

There are instances, admitted by dispatcher Byrd when he testified, when he did not enter into the computer all the relevant information. Moreover, on at least one occasion, he entered the wrong employer's name and had to correct the mistake by redoing the referral. However, these appear to be isolated and relatively infrequent problems.

To establish a violation, the General Counsel relies largely on the testimony of Charging Party Steffanie Fields, a laborer who has been a member of the Respondent since 2004. On February 5, 2010, Fields received a telephone call from Nathaniel Keller, the Union's business manager and secretary-treasurer. According to Fields, Keller said that she needed to come to the union hall and pay \$131 in union dues, or else her name would be moved to the bottom of the referral list.

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Six days later, Fields paid the \$131 to Respondent's president, Carol Jarvis. Fields also related to Jarvis what Keller had told her about her name being moved to the bottom of the referral list. Jarvis said she would talk with Keller about it.

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Later that same day, Fields received a call from Keller, who assured Fields that her name would not be moved to the bottom of the list. Rather, he said, her name would remain in its position as 22nd on the list.

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One or 2 days after this telephone conversation with Keller, fields learned from another Union member that a number of employers were hiring. She did not contact Respondent but instead tried to reach someone "higher up in the chain." She called the Southeast Laborers District Council, and obtained the name of a person to contact. That person was Robert Parnell, an assistant business manager with the District Council. However, Fields did not speak with Parnell right away.

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Rather, on February 23, 2010, Fields went to Respondent's offices and spoke with both Business Manager Keller and Assistant Business Manager Patrick Byrd. (As noted above, Respondent has admitted that both Keller and Byrd are its agents.) She said that she wanted to see the "roll call list, the out-of-work list, the work orders, and I wanted to see the position of the workers that were referred out for the month of February" 2010. Keller told her to put the request in writing, which she did, and then left.

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Later that day, Fields telephoned Keller, who told her that he had gathered the information she had requested and that she should come to the union hall at 8a.m.the next morning. She did, and, upon her arrival, informed Keller that she was there. However, Fields then waited more than 2 hours. At 10:20 a.m., she went outside and called the District Council. When she went back inside the union hall, she heard Business Agent Keller say to someone on the phone, "I'm about to get her now."

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Keller invited Fields to a conference room and asked her "what is it that you're requesting again?" Fields said, "the same information that we discussed yesterday," the roll call

list, the out-of-work list, the work orders, and the positions of the workers on the list before they were referred out for jobs for the month of February. Keller replied that he was "going to have to get that together." The meeting then ended.

As noted above, when Fields called the Southeast Laborers District Council, she had learned that she should get in touch with Robert Parnell, an assistant business manager with the District Council, but she did not contact him at that time. However, on February 26, 2010, Fields did meet with Parnell. Although they met at Respondent's union hall, no one else was present.

Fields told Parnell that she had called the union hall several times to find out why she had not received a job referral and why she had received apparently conflicting information about her position on the referral list. Parnell provided Fields with copies of documents regarding her position on the out-of-work list. For February 2010, it appeared that her name was the 41st on the list. (As discussed above, after Fields had paid the \$131 in union dues, Business Manager Keller had told her that she was twenty-second on the referral list for February 2010.)

On March 4, 2010, Fields called Respondent's office and spoke with the office manager, Shawanda Fitzgerald, who reported that Fields' name was number 36 on the referral list for March. Fields asked for an explanation of why her name was in 36th place in March when it had been in 22nd place in February, but Fitzgerald could not explain.

Fields then telephoned Business Manager Keller, who said that her name was 22nd on the referral list. She then called Respondent's assistant business manager, Patrick Byrd, and asked to know her position on the referral list. Byrd told her that she was "number 8." When she questioned that number, Byrd assured her that her position on the list was "number 8."

On March 9, 2010, Fields called Parnell and they agreed to meet the next day at Respondent's union hall. However, he never showed up. Instead, Fields met with Keller and Byrd.

Fields brought with her a friend, Alecia Coleman, who also attended the meeting. Fields requested information for the preceding 6-month period. Specifically, she asked for the out-of-work lists, the roll call lists, the work orders, the names of the individuals referred and their positions on the referral lists.

Keller and Byrd provided some of the information requested, but not all of it. They also took Fields to the computer, located in a different room, but did not allow her to print out and retain computer records because those records included Social Security numbers.

When Fields received a call on her cellphone, Keller informed her that she would have to leave the cell phone in her car, implying that he was concerned she might be making an audio recording of their conversation. Instead, Fields ended the meeting.

To the extent that Fields' testimony conflicts with that of Keller or Byrd, I credit Fields, partly because of my observations of the witnesses, and also because of Coleman's corroborating testimony. I do not find that Respondent ever provided Fields with all the records she sought.

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During this period of time, the referral system software could not print out, or at least, union officials did not know how to make the software print out, the daily referral list. Byrd's testimony explained the problem as follows:

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- Q So when Ms. Fields came to your union hall to look at documents on February 23, February 24, and March 10, you didn't have the capability to pull up daily lists.
- A Correct.
- 10 Q All right. The only list you had at that point would have been the monthly list that she was shown.
 - A Correct. And the computer list.
 - Q And that would be the list for that particular day.
 - A Correct.
- 15 Q All right.
 - A At that time.
 - Q So on February 23, she could have seen the list for February 23.
 - A Correct.
 - Q But she couldn't have seen the list for January 23.
- 20 A Correct.

Respondent supposedly solved this difficulty later, but the record suggests that there continued to be some difficulties. Indeed, during the hearing, the General Counsel asked dispatcher Byrd to retrieve the archived referral list for a particular date, December 8, 2009, and Byrd said he would go to the union hall and try to do so. However, the next day of the hearing, Byrd testified as follows:

- Q Did you go to the union hall and attempt to do that, sir?
- A Correct.
- Q What did you do to attempt to do that?
- A I went into the archive, and it jumped from 2007 to '9. It didn't have that date.
- Q Okay. Wait, wait. It jumped from 2007 to 2009?
- A December 7.
- Q Oh, okay. So the count -- when you typed the date into the computer, did it have a list in the computer for December 8, 2009?
- A Well, I don't type the date in there. It already be on the archives, to your left.
- Q Okay.
- 40 A The dates be already pre-on, and it didn't have that date.
 - Q So there's no list in the computer system for this date.
 - A Correct.
 - Q Did you attempt to contact the computer company to find out why or if there's an explanation?
- 45 A Correct.
 - Q And did they have any explanation?

A No.

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- Q At this point in time, is there any way to retrieve the referral list for December 8, 2009?
- A No. Not to my knowledge.
- Q Do you have the list for every other day, except for this one and maybe one or two isolated other examples?
- A A couple isolated, I don't have those dates.
- Q And do you have an explanation for why they disappeared from the system?
- A I don't know if they was ever in the system.
- A Okay. The computer folks can't help you to retrieve this?
- A No.

Thus, it is not possible to determine how much of the problem arose from inadequate computer software, how much from not fully understanding the way to use the software, and how much from failing to enter information into the computer. Regardless of the cause, however, it is clear that Respondent failed to comply with its own rules for the maintenance and retention of referral records.

Legal Analysis

As noted above, a union commits an unfair labor practice if it administers an exclusive hiring hall arbitrarily or without reference to objective criteria, even absent a showing of animus against nonmembers. *Stagehands Referral Service*, above. A departure from established exclusive hiring hall rules that denies employment to an applicant inherently encourages union membership, breaches the duty of fair representation and violates Section 8(b)(1)(A) and (2), unless the union demonstrates that its interference with employment was pursuant to a valid union-security clause or was necessary to the effective performance of its representative function. *Operating Engineers Local 150*, 352 NLRB 360 (2008).

In this case, the Respondent's own rules required it to keep accurate records. Moreover, these rules served important purposes, allowing users to determine whether they had received the referrals to which they were entitled. The recordkeeping requirement also afforded Union members a way to judge the work of the Union officials and staff responsible for operating the hiring hall.

Here, the document most relevant to that inquiry, the daily referral sheet, either was not maintained or lay buried somewhere in computer data and could not be accessed, which amounts to the same thing. The Respondent did not provide these sheets to Fields and, without them, she had no way of determining whether or not she had been treated in accordance with the referral rules.

Obviously, Respondent's officials either knew, or quite certainly should have known, the central importance of maintaining this record and making it available to employees. Indeed, Byrd testified as follows:

- Q I'm with you. I follow what you're saying. Do you have folks, members who call you to ask you about the lists?
- A Daily, hourly, all day.
- Q How frequently do you get questions about, Where am I on the list?
- A I get, I'd say, about a hundred calls a day.

Thus, union officials well knew about the great demand for this information. They also knew that responding by advising the caller of her position on the monthly list provided no useful information.

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In considering why the Respondent allowed this problem to continue for so long, it is difficult to ignore the fact that the hiring hall officials benefitted. So long as there were no accessible records of daily referral lists, they could operate "under the radar," could cut corners and depart from the rules with little fear of being reviewed.

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In *Plumbers Local 342 (Contra Costa Electric, Inc.)*, 329 NLRB 688 (1999), the Board overruled prior precedent to hold that honest, inadvertent mistakes do not constitute an unlawful breach of the duty of fair representation. Although the Board spoke in terms of a "gross negligence" standard, it stressed that its holding was a narrow one.

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In *Electrical Workers Local 48 (Oregon-Columbia Chapter)* 344 NLRB 829 (2005), the Board found that the respondent had displayed a reckless indifference to the eligibility of certain users of the exclusive hiring hall, and that this reckless indifference constituted gross negligence. The present record, I conclude, establishes a reckless indifference to the requirement that Respondent maintain the daily referral lists in a way that they could be made available upon request. As noted, Respondent's officials had some incentive to ignore this need because doing so allowed their actions to escape scrutiny.

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Accordingly, I conclude that Respondent violated Section 8(b)(1)(A) of the Act when it failed to provide to Fields all the referral records that she had requested. *Electrical Workers Local 6 (San Francisco Electrical Contractors)*, 318 NLRB 109 (1995). Certainly, social security numbers lawfully could have been redacted from documents bearing them, but the record fails to establish that Respondent even furnished her with redacted copies.

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The record provides extensive evidence of numerous instances, described under "V. Respondent's Actual Practice," above, in which Respondent simply ignored the referral list and dispatched whomever was in the union hall at the time. These instances occurred too frequently to dismiss as random errors. I conclude that they, too, amount to gross negligence and violate Section 8(b)(1)(A) and (2) of the Act. Plumbers Local 619 (Bechtel Power Corp.), 268 NLRB 776 (1984).

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However, I reject the General Counsel's arguments that the Respondent had a duty to adhere to its rule which allowed employers to request by name only 50 percent of the people referred. The hiring hall rules were subject to the collective-bargaining agreements which established the referral relationship and those agreements had provisions which allowed employers to request by name without any 50-percent limitation.

The General Counsel's arguments, in my view, raise issues of contract interpretation which are best left to the parties. If they are in agreement concerning the meaning and effect of the contractual provisions, it is not my business to second-guess their understanding of the terms they negotiated. Moreover, doing so would exalt rules unilaterally adopted by the Union over agreements mutually reached by both parties to the contract. Therefore, I do not conclude that Respondent violated the Act by complying with employer requests for workers by name, even if those individuals exceeded 50 percent.

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A more difficult question, I believe, concerns Respondent's disregard of the referral list for "hot jobs" in which an employer needed workers right away, and for jobs requiring special skills. Certainly, a nonfrivolous argument can be made that such referrals were necessary to the effective performance of Respondent's representative function.

Dispatcher Byrd testified convincingly that the Union was concerned that its members would lose work opportunities to other unions if the hiring hall delayed too long in supplying the requested workers. He also testified, without contradiction, that workers who were referred might be rejected for a number of reasons, such as failing a drug test, and that such a rejection created a need to refer someone else immediately.

These concerns are real and must be taken seriously. Respondent has a very legitimate interest in acting quickly on employers' requests for workers and assuring, to the extent consistent with its rules, that the individuals referred meet the requesting employer's requirements. The hiring hall's continued vitality depends upon it fulfilling its contemplated function.

Ultimately, however, I must conclude that the evidence falls short of establishing that Respondent's departures from the rules were necessary to the effective performance of its representation function. The Respondent, not the General Counsel, bears the burden of proof on this issue. *Stagehands Referral Service, LLC*, above; *Teamsters Local 519 (Rust Engineering)*, 276 NLRB 898, 908 (1985), enfd. mem. 843 F.2d 1392 (6th Cir. 1988); *Boilermakers Local 433 (Riley Stoker Corp.)*, 266 NLRB 596 (1983).

Here, the Respondent presented evidence regarding the general reasons why it must act quickly in cases where an employer needs employees in a hurry. However, the Respondent did not establish, in each such instance, why adhering to the hiring hall rules in those particular circumstances would have resulted in undue delay. Simply saying that it was a "hot job" or an emergency situation falls short of meeting Respondent's burden of proof.

Likewise, Respondent's evidence regarding referrals of employees with special skills fails to establish why following Respondent's regular referral procedure, while paying due attention to the skills of each applicant on the list, would not have accomplished the necessary purpose while honoring the referral system rules. In this record, I note that the rules require persons who register for referrals to state their special skills, if any. Even if this registration information were not digitized and in the computer, it was available to Respondent.

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The same reasoning also applies to referrals of workers to jobs with onerous physical requirements, such as lifting large weights. Respondent has not produced evidence showing that identifying individuals capable of such work would necessitate a departure from the referral rules.

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Accordingly, I conclude that Respondent thereby violate Section 8(b)(1)(A) and (2).

Remedy

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Respondent, having violated the Act, should be required to remedy the violations by posting the notice attached hereto as Exhibit A. It must also make whole, with interest, those individuals who should have been referred, but were not referred, for all losses they suffered because of Respondent's unfair labor practices.

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The record establishes a number of instances, described above, in which Respondent's assistant business manager ignored the referral list and instead dispatched individuals who happened to be in or near the hiring hall at the time. These unfair labor practices caused harm to the individuals who would have been referred had the Respondent's dispatcher followed the established hiring hall rules. The identities of the persons so injured may be determined at the compliance sage.

Conclusion of Law

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1. Turner Industrial Maintenance, LLC,, Fluor Maintenance Services, Inc., Stone and Webster Engineers and Constructors, Inc. and Williams Plant Services, LLC are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Each of these employers has entered into an agreement binding upon Respondent and providing for Respondent to act as an exclusive referral service for laborers.

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2. Laborers International Union of North America is a labor organization within the meaning of Section 2(5) of the Act. It operates an exclusive hiring hall which refers workers to requesting employers, including the employers listed in paragraph 1, above.

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3. Respondent violated Section 8(b)(1)(A) and (2) of the Act by operating its exclusive hiring hall, and by referring workers, without regard to the rules it had established to govern the hiring hall's operations.

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4. Respondent violated Section 8(b)(1)(A) of the Act by failing to maintain and furnish, upon request, records its rules required it to maintain, including the daily referral list.

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5. Respondent did not violate the Act in any manner not found herein.

On these findings of fact and conclusions of law and on the entire record in this case, I issue the following recommended 1

ORDER

The Respondent, Laborers International Union of North America, AFL-CIO, Baton Rouge, LA, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

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- (a) Failing to follow the rules it has established for the operation of exclusive hiring hall;
 - (b) Failing to maintain and furnish upon request its records regarding the referral of workers
- (c) In any like or related manner restraining or coercing employees in the exercise of their rights to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.
 - 2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - (a) Make whole, with interest compounded in accordance with *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), enf. denied on other grounds sub.nom., all individuals who had registered for referral, and who should have been referred pursuant to the Respondent's hiring hall rules, but were not, at any time on or after October 2, 2009.
 - (b) Within 14 days after service by the Region, post at its facilities in Baton Rouge, Louisiana, copies of the attached notice marked "Appendix A." Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, noticed shall be distributed electronically, such as by email, posting on

If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, these findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board, and all objections to them shall be deemed waived for all purposes

² If this Order is enforced by a judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

JD(ATL)-28-12

an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Regional Director attesting to the steps that the Respondent has taken to comply.

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Dated Washington, D.C. October 24, 2012

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Keltner W. Locke Administrative Law Judge

APPENDIX A

NOTICE TO MEMBERS

Posted by Order of the National Labor Relations Board An agency of the United States Government

The National Labor Relations Board has found that we violated federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union Choose representatives to bargain with us on your behalf Act together with other employees for your benefit and protection Choose not to engage in any of these protected activities.

WE WILL NOT restrain or coerce employees in the exercise of these rights, guaranteed to them by Section 7 of the National Labor Relations Act.

WE WILL NOT fail to follow the established rules for the operation of our exclusive hiring hall and will not refer individuals for employment except in accordance with those rules.

WE WILL NOT fail to furnish to those registered to use our exclusive hiring hall, on request, all records concerning the operation of our exclusive hiring hall, including daily referral lists.

WE WILL NOT, in any like or related manner, restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL furnish to anyone registered to use our exclusive hiring hall, on request, all records concerning the operation of our exclusive hiring hall, including daily referral records. Our rules provide that we shall maintain such records for at least 3 years.

WE WILL make whole, with interest, all persons who, pursuant to our hiring hall rules, should have been referred for employment but was not, at any time since October 2, 2009.

LABORS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1177

(Union)

Dated:	By:		
		(Representative)	(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

http://www.nlrb.gov/

Herbert Federal Building, 7th Floor, 600 South Maestri St., New Orleans, LA 70130-3408 (504) 589-6361, Hours: 8:00 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (504) 589-6389.